

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PATRICK SCANLON,	§	
	§	No. 5, 2011
Defendant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
BAC HOME LOANS SERVICING, LP	§	C.A. No. N10L-01-200
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: May 10, 2011

Decided: July 25, 2011

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

ORDER

This 25th day of July 2011, it appears to the Court that:

(1) Defendant-Below/Appellant, Patrick Scanlon, appeals from a Superior Court order that dismissed him with prejudice from a *scire facias* mortgage action. Scanlon also appeals from a Superior Court order that denied his motion for reargument and his objection to the notice of dismissal filed by Plaintiff-Below/Appellee, BAC Home Loans Servicing, LP (“BAC”). Scanlon contends that the Superior Court erred in dismissing the action against him with prejudice. Scanlon also contends that the Superior Court erred in denying his objection to BAC’s notice of dismissal. We find no merit to Scanlon’s appeal and affirm.

(2) Approximately three and one-half years ago, ACS Education Services (“ACS”), which was represented by Scanlon, moved for a default judgment against Inga N. Goodwine in the Court of Common Pleas to collect on a debt. That motion was granted and a judgment in favor of ACS in the amount of \$17,670.63 was filed in the Superior Court. Less than a year later, Goodwine purchased real property (the “Property”) in Delaware for \$440,000. BAC provided \$417,000 in mortgage financing. The judgment in favor of ACS remained unsatisfied at that time.

(3) Approximately one year after purchasing the Property, Goodwine filed a bankruptcy petition in the United States Bankruptcy Court for the District of Delaware. The bankruptcy court granted relief to ACS and BAC from the automatic stay that was otherwise imposed on Goodwine’s creditors.¹ BAC then filed a *scire facias* mortgage action on the Property in the Superior Court (the “*Sci. Fa. Action*”). Meanwhile, ACS scheduled a sheriff’s sale of the Property to collect its judgment. Scanlon was the high bidder at that sale and received a deed to the Property. Thereafter, Scanlon moved to intervene in the *Sci. Fa. Action* pursuant to Superior Court Civil Rule 24(a). BAC stipulated to Scanlon’s addition as a defendant in the *Sci. Fa. Action*.

(4) Scanlon then moved for summary judgment “to dismiss [the *Sci. Fa. Action*]” on the ground that the “sheriff’s sale and subsequent deed to [] Scanlon

¹ See 11 U.S.C. § 362.

produced a sale free and clear of [BAC]’s mortgage.” BAC cross-moved for summary judgment on the ground that BAC was a “Purchase Money Mortgagee, and, as such, obtained ‘superpriority’ over all other liens on the subject property.”

(5) The Superior Court held a hearing on those motions. At that hearing, BAC’s counsel stated: “I will concede that Mr. Scanlon was in first lien position. I think the only issue we probably have to address is dismissal with or without prejudice.” BAC’s counsel continued: “[m]y client is looking into and plans to pursue an equitable remedy through the Court of Chancery. . . . My client is out a \$400,000 mortgage over a \$30,000 student loan. There are clearly some equitable issues.”

(6) The next day, the Superior Court entered an order, which dismissed Scanlon with prejudice from the *Sci. Fa.* Action. Later that same day, BAC filed a notice of dismissal, which operated to dismiss the *Sci. Fa.* Action without prejudice.² Scanlon then objected to the notice of dismissal and moved for reargument as to the order dismissing him with prejudice from the *Sci. Fa.* Action. Thereafter, the Superior Court held a hearing and denied Scanlon’s motion. This appeal followed.

² Super. Ct. Civ. R. 41(a) (“ . . . [A]n action may be dismissed by the plaintiff without order of court Unless otherwise stated in the notice of dismissal . . . , the dismissal is without prejudice”).

(7) The *Sci. Fa.* Action is an *in rem* action. As such, the *Sci. Fa.* Action concerns the Property itself and binds all persons to the extent of their interest in the Property. Here, the Superior Court dismissed the *Sci. Fa.* Action with prejudice against Scanlon, but without prejudice against Goodwine. The record appears to reflect that the Superior Court did so to allow BAC to “pursue an equitable remedy” in the Court of Chancery. Delaware precedent has allowed for that procedure.³

(8) In voluntarily dismissing the *Sci. Fa.* Action against Goodwine, BAC abandoned its *scire facias* proceeding in the Superior Court. So long as BAC timely files an action in the Court of Chancery, BAC is permitted to pursue an equitable remedy in the Court of Chancery.⁴ The Superior Court did not abuse its discretion in this case.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:
/s/ Henry duPont Ridgely
Justice

³ See *Elysian Federal Savings Bank v. Sullivan*, 1990 WL 20737 (Del. Ch. 1990); 2 WOOLLEY ON DELAWARE PRACTICE §§ 1358–82 (1906).

⁴ We do not reach whether or not BAC has any equitable remedy on the facts of this case.